

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Rob Charles NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: jhinderaker@lrlaw.com
Marvin Ruth NV State Bar No. 10979
Email: mruth@lrlaw.com

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTIONS OF
USACM TRUST TO PROOFS OF
CLAIM BASED IN WHOLE OR IN
PART UPON INVESTMENT IN THE
FOX HILLS 216, LLC LOAN**

Hearing Date: August 30, 2011

Hearing Time: 10:30 a.m.

Estimated Time for Hearing: 10 minutes

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “Fox Hills 216, LLC.”¹ A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount proposed was \$29,000,000. The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on 987 acres generally known as Fox Hills Phase II, which was being planned for approximately 900 homes. The Offer Sheet noted that the second phase of the community was awaiting final entitlement approval, which was estimated to occur in the summer of 2006. The Offer Sheet further stated that the loan to value was approximately 55% based on values of similar properties in the area.² Pursuant to the Circular, the loan was intended to acquire the remainder of the land acreage and water rights necessary to complete the master planned community.³

5. On January 23, 2006, the Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a Promissory Note Secured by Deed of Trust, in the amount of \$25,755,000 (the “Note”) and a Loan Agreement. The Loan Agreement and Note provided for potential future loan increases up to \$29,000,00. The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” from Fox Hills Fresno Slough, LLC in favor of the Direct Lenders that was recorded in the official records of Fresno County, California on February 15, 2006 at Instrument Number 2006-0033494. The Note was also secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” from Fox Hills 216, Fox

¹ The name of the borrower on the Offer Sheet is a different entity from the actual borrowing entities that signed the loan agreement.

² Although the Offer Sheet said that an appraisal had been ordered, counsel for the Trust has been unable to locate an appraisal.

³ The Loan Agreement stated that the loan was intended to “acquire and/or refinance” the subject property.

Hills 99, Fox Hills 50, and Fox Hills Nursery LLCs in favor of the Direct Lenders that was recorded in the official records of Merced County, California on February 10, 2006 at Instrument Number 2006-011230. The Note was also supported by an Unconditional Guaranty executed by Kent Hoggan and Catamount Management, LLC on January 23, 2006.

6. The USACM "Loan Summary" dated July 31, 2006 and filed in this case shows that Borrower was "Non-performing" on the Note as of July 31, 2006. During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court's orders.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 13, 2011

/s/ Geoffrey L. Berman

Geoffrey L. Berman

Copy of the foregoing (without exhibits)
Mailed by First Class postage prepaid
U.S. Mail on July 13, 2011 to the
Investors in the Fox Hills 216, LLC
Loan listed on Exhibit A.

s/ Matt Burns

Matt Burns

Lewis and Roca LLP